

opportunity to decide whether to exercise its CWA § 404(c) authority. United States Motion to Extend Stay of Proceedings Regarding Mingo Logan Coal Company's Motion for Summary Judgment (Doc. No. 463) at ¶ 6.

On October 16, 2009, EPA formally initiated the administrative process to exercise its Section 404(c) authority by notifying the U.S. Army Corps of Engineers ("Corps") that, pursuant to 40 C.F.R. § 231.3(a), it "intend[s] to issue a public notice of a proposed determination to restrict or prohibit the discharge of dredged or fill material at the Spruce No. 1 Mine project site consistent with [EPA's] authority under Section 404(c) of the Clean Water Act" October 16, 2009 letter from William C. Early, Acting Regional Administrator, EPA Region 3, to Colonel Robert D. Peterson, District Engineer, U.S. Army Corps of Engineers, Huntington District ("EPA Notice Letter"), at 1. (See attached). The EPA Notice Letter further stated that "EPA's regulations on Section 404(c) provide for further coordination between EPA, and the Corps of Engineers and the applicant," and that "EPA is available to meet with [the Corps] and [Mingo] during the next 15 days to discuss options for further reducing adverse environmental impacts associated with the proposed project." *Id.*, at 2. Clearly, these circumstances do not exist in "every case."

Extension of the stay for an additional 30 days, until November 4, 2009, will allow for the necessary coordination between EPA and the Corps and Mingo Logan to begin. EPA will ultimately decide whether it will be necessary to take the next step in the CWA § 404(c) process by issuing a Proposed Determination based on those discussions. This Court granted the initial 30-day stay for a similar purpose -- to allow the Corps a reasonable opportunity to consider whether or not to exercise its administrative authorities. Order dated Sept. 15, 2009 (Doc. No. 461). The United States' request that EPA be permitted a similar opportunity to consider

whether to exercise its administrative authorities, in light of the Corps' decision, is also reasonable.

Mingo Logan will not be prejudiced in any way by the delay of an additional 30 days. Indeed, as this Court recognized when granting the initial request for stay, the extension will not affect Mingo Logan's ability to conduct mining operations pursuant to the Parties' earlier agreement. Accordingly, the brief extension of the stay is a reasonable request to maintain the status quo.

Respectfully submitted,

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